

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 AMERICAN GUARD SERVICES, INC.,

11 Plaintiff,

v.

12 TERMINAL SECURITY SOLUTIONS, INC.,
13 *et al.*,

14 Defendants.

CASE NO. C18-0603-JCC

ORDER

15 This matter comes before the Court on Defendants' motion for leave to file a second
16 amended answer and counterclaim (Dkt. No. 45). Having thoroughly considered the parties'
17 briefing and the relevant record, the Court finds oral argument unnecessary and hereby DENIES
18 the motion as moot for the reasons explained herein.
19

20 **I. DISCUSSION**

21 Plaintiff American Guard Services and Defendant Terminal Security Solutions ("TSS")
22 are competing security guard companies who both provide guard services to cruise ship
23 terminals in the Port of Seattle. (Dkt. No. 1 at 5–6.) This dispute arises from the decision of
24 Cruise Ship Terminals of America, operator of Terminal 91 in the Port of Seattle, to award
25 Defendant TSS the contract to provide security services for the 2018 cruise ship season, despite
26 having awarded the 2017 contract to Plaintiff. (*Id.*) In its complaint, filed in April 2018, Plaintiff

1 alleges that this decision was due to Defendant TSS's hiring of Defendants Tor Wallen and
2 Wayne Pack. (*See* Dkt. No. 1 at 6–8.) Plaintiff alleges that Defendants Wallen and Pack, its
3 former employees, violated their employment contracts with Plaintiff when they were hired by
4 Defendant TSS. (Dkt. No. 1 at 7.) Plaintiff further alleges that Defendants solicited the 2018
5 contract by using confidential information obtained by Defendants Wallen and Pack during their
6 employment by Plaintiff. (Dkt. No. 1 at 6–7.)

7 Defendants now allege that Plaintiff's *de facto* owner is Ousama Karawia (also known as
8 Sam Wafaa), a convicted felon, after becoming aware of a 2017 Maine lawsuit and a 2018
9 California lawsuit in which Plaintiff and Karawia are defendants. (Dkt. No. 42 at 1–5.)
10 Defendants seek leave to amend their answer to include an affirmative defense of illegality of
11 contract, based on their allegation that Karawia is a convicted felon and the true owner of
12 Plaintiff. (Dkt. No. 45 at 1–2.)

13 Prior to Defendants' motion to amend their answer, they moved to compel production of
14 the identity of witnesses and for sanctions related to factual allegations in the complaint
15 concerning a former Defendant who had been dismissed. (Dkt. No. 33.) The Court denied the
16 motion and ordered Plaintiff to file an amended complaint which removed the claims against the
17 former Defendant and the factual allegations underlying them. (Dkt. No. 47.) Plaintiff filed an
18 amended complaint on February 14, 2019 (Dkt. No. 57), three weeks after Defendants filed the
19 instant motion for leave to amend. (*See* Dkt. No. 48.)

20 Thus, Defendants' motion for leave to file a second amended answer is moot; Defendants
21 are required to file an answer to Plaintiff's amended complaint (Dkt. No. 57) as a matter of
22 course. *See* Fed. R. Civ. P. 15(a)(3) ("Unless the court orders otherwise, any required response to
23 an amended pleading must be made within the time remaining to respond to the original pleading
24 or within 14 days after service of the amended pleading, whichever is later."). Defendants may
25 file an amended answer including any new affirmative defenses that they wish.

26 Defendants have also filed a motion to compel and for sanctions relating to the issue of

1 Karawia's ownership interest in Plaintiff. (Dkt. No. 42.) Defendants' notice of deposition, served
2 on December 18, 2018 (Dkt. No. 44 at 2), included this topic:

3 **Topic 23:** AGS's and its affiliates' relationship with Ousama Karawia (aka Sam
4 Karawia aka Sam Wafaa) including his involvement with operations, any
5 compensation paid to him, and how his role affects any designation as a women-
owned business entity.

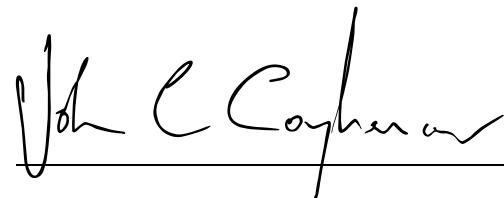
6 (Dkt. No. 44-1 at 67.) Plaintiffs produced Douglas S. Snow for deposition (*id.* at 75), who, when
7 asked “[w]hat role did Sam Karawia have with AGS in June 20 of 2017,” testified that he did not
8 “know what role Sam plays.” (*Id.* at 78.) Defendants subsequently requested that Plaintiff
9 produce “a 30(b)(6) witness for the Karawia topics,” which Plaintiff stated that it was “not
10 amenable to.” (*Id.* at 81.) Plaintiff failed to move for a protective order on this topic, and
11 Defendants subsequently filed the motion to compel discovery. (Dkt. No. 42.) As Defendants are
12 required to respond to Plaintiff’s amended complaint, Defendants’ motion to compel and for
13 sanctions will be re-noted to the day that this order is issued.

14 **II. CONCLUSION**

15 For the foregoing reasons, Defendants’ motion for leave to file a second amended answer
16 (Dkt. No. 45) is DENIED as moot. The Clerk is hereby DIRECTED to RENOTE Defendants’
17 pending motion to compel and for sanctions (Dkt. No. 42) to February 28, 2019.

18 DATED this 28th day of February 2019.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE